
EXHIBIT B

Capital Reporting Company

Page 1

1 IN THE UNITED STATES DISTRICT COURT FOR THE
 2 DISTRICT OF COLUMBIA

3 -----:

4 PAULA PAGONAKIS,

:



ORIGINAL

5 :

6 Plaintiff,

:

7 :

8 v.

: Case No.:

9 :

06-027

10 EXPRESS, LLC, a/k/a

:

11 LIMITED BRANDS, INC.,

:

:

12 Defendant.

:

:

13 -----:

14 Washington, D.C.

15 November 20th, 2006

16

17 Deposition of:

18 PAULA PAGONAKIS,

19 Called for oral examination by counsel for

20 Plaintiff, pursuant to notice, at the offices of Bailey

21 & Ehrenberg, PLLC, 1155 Connecticut Avenue, N.W., Suite

22 1100, Washington, D.C., beginning at 1:00 p.m, before

Teague Gibson of Capital Reporting, a Notary Public.

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Page 7

1 else's fault. They rant into me and it got into
2 litigation.

3 Q Did you have any continuing injuries from
4 your first auto accident?

5 A There was, I believe, some damage to veins
6 in my leg, something that was said to be permanent
7 but I don't notice any problems from it. I think
8 there was some crushed vein or something, I'm not
9 remembering exactly, but I didn't have really -- I
10 don't have anything that I feel or anything with
11 my -- I don't have any problems from that.

12 Q So as far as you know from 2003 forward
13 you haven't had any lingering affects from your
14 first auto accident?

15 A Not that I recall, no.

16 Q The second one you recall more of?

17 A Yes.

18 Q When did that approximately take place?

19 A That date you just said in 2005, I believe
20 it was April.

21 Q 1995 or?

22 A I mean 1995.

1 Q And what are those?

2 A I have a traumatic brain injury. I have
3 inner ear damage. I have cognitive processing
4 difficulty. I have equilibrium problems. I have
5 functional vision problems. I have fibromyalgia and
6 I have persistent back and neck pain.

7 Q Anything else?

8 A That's what I can remember right now.

9 Q Have these been ongoing since 1995?

10 A Yes.

11 Q Continuous?

12 A Yes, all permanent. I also have
13 difficulty with short-term memory.

14 Q Aside from the two auto accidents and this
15 lawsuit have you been involved in any other
16 litigation?

17 A No.

18 Q Do you remember filing any charges for
19 Workers' Compensation injuries for any employer?

20 A I don't recall any.

21 Q Don't recall filing any -- you understand
22 what Workers' Compensation is?

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Page 14

1 for a short period while they found their permanent
2 career jobs.

3 Q What's a short period, how long?

4 A I don't know, six, eight months and I'm
5 kind of guessing, definitely less than a year, six
6 months.

7 Q Since January 1, 2004 has anyone, your
8 sons or anyone else, lived with you or your husband?

9 A One of my sons is a daughter.

10 Q Aside from your two children has anybody
11 lived with you and your husband?

12 A No.

13 Q They lived with you in 2003, right?

14 A I believe it carried into, I'd have to
15 check when they got their jobs because that was the
16 Fall of 2003, so I believe they might have still
17 been with me a few months into 2004 as well.

18 Q Why did you leave Canton, Ohio to move to
19 Delaware?

20 A My husband's job took us there.

21 Q What's your husband's job?

22 A At that time or now?

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Page 31

1 A Well, I've been working hard at trying to
2 put a work life back together and I have some
3 continuing obstacles and some depression issues.

4 Q What was Dr. Paviour's expertise in?

5 A Talk therapy, I believe, would be the
6 answer to that.

7 Q Where was he located, Virginia or
8 Delaware?

9 A In Virginia.

10 Q The first time you saw him was
11 approximately when?

12 A I don't recall.

13 Q If you moved to Virginia September 2005
14 did you immediately go or when?

15 A No, because I had spent some time trying
16 to be employed before I was discouraged to the point
17 to seek help.

18 Q So just so I understand. You leave
19 Express, you resign approximately March 2004, do you
20 agree with that?

21 MR. EHRENBURG: Object to the form, you can
22 answer.

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Page 32

1 A Yes.

2 Q From that point until you leave Delaware
3 you're seeing on an as needed basis just a family
4 physician, right?

5 A That's the best of my memory.

6 Q When you moved to Virginia you decided to
7 see a therapist, why did you start seeing a
8 therapist?

9 A I explained that.

10 Q I don't understand. Is it because you
11 couldn't find another job?

12 A I'm trying to find meaningful employment
13 so that I can contribute to society and feel
14 fulfilled. When I try to apply or interview or find
15 something I have obstacles that don't -- that get in
16 my way of presenting myself to my best assets.

17 Q When you say obstacles what do you mean?

18 A I have a lot of self confidence issues. I
19 worry about getting harassed again for things I
20 can't do instead of what I can contribute. I worry
21 that somebody might see that I need some
22 accommodations and hold that against me because it's

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Page 35

1 medication.

2 Q So he's not a doctor?

3 A I don't know, don't remember if he's a
4 doctor. He's got a doctorate of something
5 obviously.

6 MR. CAMPBELL: Do we have all the therapist
7 records?

8 MR. EHRENBURG: We have his records. Those are
9 the ones I told you we are waiting for. We have
10 them now. We need to get them copied and labeled
11 but we have those.

12 MR. CAMPBELL: Are you going to give them to me
13 today?

14 MR. EHRENBURG: No, we had talked about this.

15 MR. CAMPBELL: We'll have to just plan on
16 coming back I guess with the therapist about that.

17 MR. EHRENBURG: We had discussed this and we
18 said we are waiting for additional documents dealing
19 with the treatment.

20 MR. CAMPBELL: Yeah, I said we could go today.

21 MR. EHRENBURG: That were towards mitigation
22 and you said you didn't feel you needed those before

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Page 43

1 organization called SCORE.

2 Q What have you done with SCORE?

3 A I consult small businesses. I'm a
4 consultant for small businesses.

5 Q How long have you been with SCORE?

6 A Over two years, maybe three, I'm not sure.

7 Q You started in Delaware and transferred
8 that relationship to Virginia?

9 A Yes.

10 Q How much work do you do with SCORE?

11 A That's totally dependent upon the needs of
12 the people who come to help for the organization and
13 the time I have to devote to that.

14 Q How much approximate time per week on
15 average?

16 A That varies from maybe five hours to 20
17 hours, just depends.

18 Q What is SCORE?

19 A Service Core of Retired Executives.

20 Q You're one of the retired executives?

21 A Well, not everybody's retired volunteers
22 for SCORE. I'm a counselor with SCORE.

Capital Reporting Company

Page 78

1 certification attached as well so it is different.

2 Q It is approving your FMLA leave, correct?

3 A Yes.

4 Q Are you aware of any time that Express,
5 your former employer, denied any FMLA leave request
6 that you made?

7 A What was the question?

8 Q Are you aware of any time that your former
9 employer Express denied any FMLA requests that you
10 made?

11 A They did not deny a request that I made.

12 Q What is your FMLA claim against the
13 company? What did that company do that violated the
14 FMLA?

15 MR. EHRENBURG: Object to the form. That asks
16 for a legal conclusion. She's not a lawyer, so I
17 don't think that's an appropriate question.

18 Q Your counsel in the complaint filed on
19 your behalf alleges that the company violated the
20 FMLA and you're a human resources background. What
21 I'm asking you was there anything that happened to
22 you during your employment with Express that you

Capital Reporting Company

Page 79

1 believe resulted from your FMLA leave request?

2 A I can't answer that.

3 Q Why can't you answer that?

4 A Because I don't have memorized or what the
5 details about the FMLA and all that it entails. I
6 asked for leave because I was sick, that's the
7 aspect of FMLA.

8 Q And you have a lawsuit against the
9 company. I'm asking you just verify all your leave
10 requests under the FMLA were approved by Express,
11 correct?

12 A I asked for two medical leaves with an
13 extension that were granted. These are two leaves
14 with one being extended that was granted, that's all
15 I state.

16 Q No leave requests were denied?

17 MR. EHRENBURG: I'm going to object. You've
18 asked and that's been answered. To the extent
19 you're trying to get her to make a legal conclusion
20 or state a basis for the claim, she's already
21 answered your question so you have what you need for
22 summary judgment.

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Page 81

1 A I don't remember.

2 Q Did anybody say you were being discharged
3 because you were on an FMLA leave?

4 A I don't recall that.

5 Q Did anybody make any comments about your
6 FMLA leaves?

7 A Yes.

8 Q Who?

9 A Kristin Bosley.

10 Q What did she say?

11 A She made offhanded comments under her
12 breath and to other people about she would mimic me
13 and make comments that indicated she questioned the
14 validity.

15 Q Of your leave request or of your
16 accommodation request?

17 A All of it.

18 Q When were these comments made? We're
19 looking at some documents that show -- why don't we
20 verify the timeframe. Look at Exhibit 1, says that
21 your FMLA leave began on 12/8/03. Is that your
22 understanding? Do you have any reason to disagree

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Page 82

1 that that was the beginning of your FMLA leave?

2 A Without looking at my own personal notes
3 to be able to say dead certain, but I'm just nervous
4 about that because I don't have my calendar in front
5 of me. I can assume this is right.

6 Q You don't have any reason to disagree with
7 that date?

8 A No.

9 Q You returned to work at some point in late
10 December, correct?

11 A Yes.

12 Q You went back out on a leave if you look
13 at Exhibit 2 states that your leave began on
14 February 3, 2004?

15 A Yes.

16 Q You returned in late December and returned
17 to work February 2004?

18 A That's what this looks like.

19 Q I'm asking you, is your recollection any
20 different as we sit here today?

21 A I have to depend on these papers because I
22 don't have a direct recollection.

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Page 84

1 A December 23rd.

2 Q December 23 was your return to work date?

3 A Correct.

4 Q So you were on leave approximately from,
5 and again we don't have your calendar, but just talk
6 about these exhibits from December 8, 2003 until
7 December 23, 2003?

8 A Yes.

9 Q You worked until February 3, 2004 when you
10 went on an FMLA leave again, correct?

11 A Correct, Elise O'Niell also made comments.

12 (Pagonakis Exhibit No. 4 was marked)

13 Q Handing you Defendant's Exhibit 4. It
14 says effectively immediately March 18, 2004?

15 A I couldn't return to work.

16 Q I'm not asking you why. I'm asking is
17 that the date March 18th?

18 MR. EHRENBURG: Object to the form. If you let
19 her finish, you said she resigned and she was
20 answering your question, so please let her finish.

21 MR. CAMPBELL: Jason, this is for me to ask
22 questions.

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Page 88

1 MR. EHRENBURG: We'll stipulate that's when the
2 second leave started because that's what the
3 documents show.

4 A I said that already.

5 MR. EHRENBURG: Right, so there's nothing left
6 to answer.

7 Q And your leave was extended all the way
8 through the date of March 18, 2004 when you
9 resigned, correct?

10 MR. EHRENBURG: Object to the form, you can
11 answer.

12 A My leave ended and I was supposed to
13 return to work on the 18th and I could not return to
14 work.

15 Q You remained on leave from February 3,
16 2004 until March 18, 2004 when you decided you
17 couldn't return to work and you submitted a letter
18 of resignation?

19 MR. EHRENBURG: Object to the form again, you
20 can answer. And I think the question has already
21 been answered. She said that she was out on leave
22 from February 3rd through March 18, so you can try

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Page 91

1 (Record was read)

2 Q Are you saying they didn't take place
3 while you were on leave?

4 A No, nobody called me while I was on leave.

5 Q So you returned to work, what was said to
6 you about your FMLA leave?

7 A Offhand comments. I don't know that I can
8 recall exactly at this time what people said, but
9 there were just snide comments made to me and to
10 other employees.

11 Q You can't recall any of the snide
12 comments?

13 A With accuracy probably not at this time.

14 Q Who made these comments?

15 A Elise, Ana, Kristin Bosley.

16 Q Did you nonetheless ask for a second leave
17 and it was granted?

18 A I didn't hear the first couple words.

19 Q You nonetheless asked for a second FMLA
20 leave and it was granted?

21 A Yes.

22 Q You can't give us anything as to the

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Page 93

1 to take a few minutes off the floor to eat my lunch
2 earlier to get it out of the way before the heavy
3 time came and so I ran in the back to grab a half a
4 sandwich I had packed because you pack at that time
5 of year, you don't go out to lunch, and I sat down
6 to eat it and Ana poked her head out the door and
7 saw me sitting there and said how do you need a
8 break, made a comment about me sitting down.

9 Q Any other comments during this time
10 period?

11 A She and Elise were in the office --
12 actually Elise before Ana made that comment Elise
13 came in the back and saw me sitting there and went
14 into the office where Ana was and then they both
15 came out and Ana made the comment about that and
16 Elise said, yeah, I never get to sit down.

17 Q Any other comments during this time period
18 when you returned to work?

19 A That was a specific one I can remember.
20 Just general comments about how do you rate and I'm
21 characterizing the nature other than the one that
22 Ana said.

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Page 94

1 Q That's the only specific comment you can
2 recall?

3 A At this time, yeah, that was a -- I was
4 shocked at that.

5 Q Can't recall any other comments?

6 A I can't recall specific ones, how do you
7 rate, that phrase came out often.

8 Q Anything else?

9 A I can't remember more specifics, just the
10 general.

11 Q Now let's go on to your employment with
12 Express during the Summer of 2003. At some point
13 you were promoted to a co-manager position, correct?

14 A To the best of my memory that was the
15 time.

16 Q How many co-managers were employed at the
17 Christiana Mall store?

18 A I would have to look that up. They had a
19 full staff. I'd have to look it up. I can't
20 recall. I can't remember who all was working at
21 that time.

22 Q What was in general the revenue of the

Capital Reporting Company

Page 97

1 A I don't know that I'm going to be able to
2 remember that. I can't recall at this time.

3 Q How do you know she was a co-manager when
4 she was working part-time hours?

5 A She attended all the co-manager meetings.
6 I was told she was a co-manager. I interacted with
7 her as a co-manager. I guess as far as court proof
8 I guess I can only assume by those things that she
9 was co-manager.

10 Q You were paid full-time salary, correct?

11 A Yes.

12 Q You worked at Express for quite awhile,
13 right?

14 A Yes.

15 Q You were initially hired about 1999?

16 A '89 or '99, yes.

17 Q 1998 or 1999? You said '89?

18 A I worked for them for approximately seven
19 years, whatever that backs out to.

20 Q Did you understand that each store had so
21 many associate hours per week that it could use?

22 A Yes.

Capital Reporting Company

Page 98

1 Q And so the associates were scheduled based
2 on those numbers of hours that the store was
3 allocated?

4 A Yes.

5 Q And if a co-manager is scheduled to be
6 paid for 40 hours they were considered at least 40
7 hours on the schedule, correct?

8 A If what?

9 Q The store had a certain number of hours
10 that it could employ associates for each week,
11 right?

12 A I think I need to say something here in
13 relation to these questions, if you're asking about
14 my hours.

15 Q I'm asking you about the store in general
16 right now?

17 A When Ana gave me my assignments my payroll
18 came out of the Christiana store. She gave
19 Christiana extra hours to compensate for my hours
20 out of the store.

21 Q I'm asking you about the general store
22 right now, general policies of Express. Do you

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Page 104

1 traffic.

2 Q What were daylight hours where you could
3 work and then get home before it got dark?

4 A That changes every day as the sun changes.

5 Q I'm talking about the holiday season.
6 Right now about this time of year when you're
7 heading into the holiday, November, December?

8 A I'm not going to be able to tell you that
9 without looking at a calendar and see when the sun
10 sets and when it rises, whether it's a cloudy day, a
11 sleeting day, a foggy day. I can't pinpoint
12 specific hours. It's approximately I would try to
13 leave work a half an hour before I looked every
14 single day when the sun rose and when the sun set
15 and looked at the weather conditions and timed
16 myself to have a half an hour to get to and from
17 work.

18 Q Your work hours would change on a daily or
19 weekly basis?

20 A Pretty much daily because you get less
21 time until the 20th and more time after the 20th.
22 Once you hit the solstice your daylight hours are

Capital Reporting Company

Page 105

1 longer again.

2 Q If it was foggy, sleeting or snowing hard
3 you wouldn't be able to drive?

4 A I wouldn't be able to drive until the fog
5 usually cleared. I would not be too late and that
6 was bad weather and I couldn't drive and it looked
7 like that might happen being longer than a short
8 period then I had resources available on those
9 occasions to help me.

10 Q Do what?

11 A Get to work.

12 Q So in general what you were asking for is
13 if you woke up in the morning and it was foggy you
14 would call in and say I'll come in once the fog
15 lifts?

16 A That's what I was provided.

17 Q Or if you woke up and it was snowing hard
18 you would wait to see if the snow would stop or try
19 and get alternative means to get in to work?

20 A Yeah.

21 Q Would that be the same if it was raining?

22 A It depended on how bad it was raining, how

Capital Reporting Company

Page 106

1 dark the clouds were. If it's some rain it didn't
2 affect me. If it was where most of the cars on the
3 road are pulling off the road then I didn't venture
4 out until that heavy part of the storm stopped.

5 Q When you started your shift it had to be
6 flexible for you just in case something came up; is
7 that right?

8 A Yes.

9 Q Then at the end of the shift did you just
10 simply look out and make a decision when you were
11 leaving or how did that work?

12 A I looked at when the sun was setting,
13 every day you have various people coming in at
14 various different times and most of the staff was
15 very cooperative. If it was raining they'd say my
16 gosh, it's raining or cloudy or it's dark, but
17 typically I would know when the sun was going to set
18 so I'd have a target time to leave and aim at that
19 target time which, like I say, changed a minute or
20 two every day and I had it to a science.

21 Q And November December presumably you had
22 to leave earlier at the end of the day than you

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Page 108

1 Q You would agree that the holiday season
2 for a consistent period over a three or four week
3 time period November December is the busiest time?

4 A Not busiest, some years there's times it
5 can be busy.

6 Q What other four week period is busier than
7 the November December time period?

8 A I don't know. I'd have to look at
9 records.

10 Q You worked there for nine years?

11 A I worked there for seven years. I think I
12 remember some occasions where a return time is
13 busier actually than pre-Christmas. So I can't say
14 that, yes, the three weeks leading to Christmas are
15 the busiest time. I don't have statistics. How
16 about I don't know is my answer. I don't know.

17 Q Thank you. On the accommodations up until
18 November 2003 you admit that Express always
19 accommodated your restrictions?

20 MR. EHRENBURG: Object to the form, you can
21 answer.

22 A Up until when?

Capital Reporting Company

Page 109

1 Q November of 2003, say November 1, 2003?

2 A Yeah.

3 Q Were there any comments made -- are you
4 alleging any comments or problems up until November
5 1, 2003?

6 A Yes.

7 Q What are you alleging?

8 A From the time that Ana started to promote
9 me and discuss higher options and opportunities for
10 me with the company Kristin and Elise challenged
11 that decision with Ana, made it known to me that
12 they challenged it, made comments under their
13 breath, made comments to other managers, made
14 comments to employees and continually made comments
15 to me. I was degraded, belittled, humiliated in
16 front of other people, in front of customers.

17 Q When did these comments begin?

18 A I don't know that I'm going to be able to
19 give you a date.

20 Q Shortly after transferring to Delaware,
21 was it in 2003?

22 A I think I answered that. When Ana started

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Page 131

1 A Because I was completely having a
2 breakdown. It was killing me. I was completely
3 exhausted, emotionally drained, physically drained.
4 Completely unable to stay awake. I couldn't do
5 daily functions at home. I put every ounce of
6 energy I had into the job and it was sucking the
7 life out of me.

8 Q How many nights did you work from November
9 25th, 2003 until December 8, 2003?

10 A First of all I already said I don't know
11 and that's not relevant to this statement I just
12 made.

13 Q Well, it is relevant because November
14 25th, 2003 is when you said that Tara told you they
15 couldn't accommodate you, you went on leave on
16 December 8, 2003 and you said that the shift sucked
17 the life out of you. I'm asking how many shifts
18 sucked the life out of you?

19 A I didn't get days off. I didn't get
20 breaks. I didn't get time to go to the bathroom. I
21 didn't get lunch breaks. Very frequently I would go
22 10 days of working without a day off. It doesn't

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Page 132

1 have to do with --

2 Q November 25th, 2003 to December 8th, 2003,
3 I don't even think there's probably 10 days total in
4 that time period?

5 A You must have a stronger fortitude of
6 physical strength than I do.

7 Q You said you worked 10 days straight?

8 A I answered you. I'm sorry if that's
9 amazing to you. It's a fact.

10 MR. EHRENBURG: Your question assumes that they
11 were accommodating her on the 25th. You didn't ask
12 her if they were not accommodating her before that
13 so I think she answered your question.

14 Q When is it your testimony that they
15 stopped accommodating you?

16 A I'm not going to be able to give you that
17 date without referring to my calendar. It's years
18 since then. I don't have that on the tip of my
19 ahead.

20 Q It's your testimony they just stopped
21 accommodating you and it was before Tara came in to
22 meet with you?

1 Q Were you there to hear it?

2 A I was told by other managers that this was
3 said to them.

4 Q What comments did you hear specifically
5 from anybody directly to you?

6 A Comments like, oh, is the weather nice for
7 you, don't quote this, this is the gist of the
8 comments, it would be nice if I could not have to do
9 this or that. It was ironic that Elise continually
10 made comments about my schedule when she her self
11 worked Monday through Friday for the most part till
12 5:00 o'clock.

13 Q What other comments do you recall?

14 A My authority with the staff was
15 continually challenged, people would get yelled at
16 for speaking to me, they would get assigned bad,
17 distasteful jobs. If I was speaking with an
18 employee giving them a directive because I was
19 responsible for the sales floor it would be
20 challenged. Elise would come out to the floor and
21 see me and come over and challenge, she continually
22 challenged me as to what I was doing and why I was

1 doing it. She would walk up to customers that I was
2 helping and say I see no one's helping you. That's
3 one thing I recall her specifically saying.

4 Comments made as I walked past. She doesn't do
5 anything, she just walks around here doing nothing.

6 If I had to go get some something in the room and
7 back out on the sales floor I would walk past her,
8 she would make a comment is that all you do is walk
9 around, all these assumptions, harassing comments.

10 Q What else?

11 A All day long on and on and on.

12 Q What else?

13 A Many comments to every little thing. One
14 time Elise and Kristin were doing something together
15 over in an area and they called me over there and
16 one of them said, oh, can I see your ring and she
17 took my hand and said, oh, my God, that looks like
18 an antique and the other one one was like putting
19 her hands all over my face and rubbing my cheeks and
20 they were touching me and I asked them to stop.
21 They were like mocking me and making fun of me. One
22 time Kristin slapped me in the face with her gloves.

1 to them.

2 Q Any other comments?

3 A Several other comments I can't recall
4 right now.

5 Q We were talking about your accommodations
6 from December 23, 2003 when you went on your second
7 FMLA leave, you said they made you at times climb
8 too high, climb ladders?

9 A They didn't make me climb because I
10 refused to do it. I was given an assignment to
11 completely take down all of the men's denim on the
12 back wall which was, I don't know, 15, 20 feet high,
13 refold it and put it back up.

14 Q And you just simply told them you couldn't
15 do it and didn't do it?

16 A I got other people to help me do it and it
17 didn't get completely done because -- I don't know.

18 Q How else did they not accommodate you
19 during that period?

20 A They didn't give me breaks on a regular
21 basis. If I needed to go to the bathroom, must be a
22 thing with the company because if you ask to go to

Capital Reporting Company

Page 154

1 the bathroom and you wait a reasonable amount of
2 time to make an adjustment to let me go I was denied
3 going to the bathroom.

4 Q You weren't allowed to go to the bathroom?

5 A Wasn't allowed to go to the bathroom.

6 Q What other accommodations were you denied?

7 A Some lunches, wasn't even allowed to stop
8 for lunch, or it would be so late in the day that I
9 have a head injury, you're supposed to eat at
10 regular intervals or it's not healthy for your head,
11 normal people get lunch breaks.

12 Q What other ways were you not accommodated
13 during this time period?

14 A Climbing, I told you they asked me to do
15 higher levels of work and I was told to go out and
16 do them on the sales floor in the middle of the
17 store. Those were part of the accommodations
18 originally granted. I don't know. I've gone
19 through this. The scheduling, sometimes my day off
20 would be Sunday, Monday and then I would work the
21 whole rest of that week, the weekend all the way up
22 until Friday, Saturday. So I worked like, what is

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Page 155

1 that, 10 days without a day off. Everybody else,
2 all the other managers, had a particular day of the
3 week that they were scheduled off so they could
4 count on Wednesday is my day off, I can make my
5 appointments. I never got my schedule till the last
6 minute.

7 Q Anything else during this timeframe, is
8 that everything?

9 A I don't know that that's everything.
10 That's what I can recall right now.

11 Q So you worked until February and then you
12 went on a leave of absence again?

13 A Yes.

14 Q Do you recall Jennifer Hinckle's name as
15 being a individual in human resources that you were
16 communicating with at least via e-mail?

17 A Yes.

18 Q Did ever go back to Jennifer and say, hey,
19 some of my restrictions aren't being accommodated?

20 A I can't remember that.

21 Q So do you know if you went to anybody in
22 the human resources department to say, hey, the

1 day?

2 A Well, knowing myself and my habits I would
3 say that this second March 24th I sent because this
4 first one possibly was turned in by hand and I'm
5 following up.

6 Q Why does it say I'm sending a hard copy as
7 a follow up to the resignation letter faxed?

8 A I must have faxed it. This is obviously
9 another method to make sure they received it.

10 Q So based on that I'm assuming that you
11 never talked to anybody about your resignation, you
12 didn't talk to Ana, Kristin or Susan?

13 A It says I had no response in any form of
14 communication from either you, Kristin, since the
15 start of my medical leave. So, no, nobody discussed
16 anything.

17 Q You faxed that resignation letter on March
18 18th and didn't talk to anybody about the reasons
19 for your resignation?

20 MR. EHRENBURG: Object to the form.

21 A Yeah, I had spoken about -- for months I
22 had been talking about my problems and getting no

1 released you to return to work on March 18th, 2004?

2 MR. EHRENBURG: Object to the form. Is there a
3 question?

4 Q Did it release you to return to work on
5 March 18th, 2004?

6 A That's what it looks like.

7 Q And your doctor didn't fill in any
8 accommodations that were necessary?

9 A None evident on this copy.

10 Q And you resigned, we went through,
11 effective March 18th, 2004?

12 MR. EHRENBURG: Object to the form, you can
13 answer.

14 A I did not return to work on that day.

15 (Pagonakis Exhibit No. 13 was marked)

16 Q Show you what's been marked as Exhibit 13.
17 Have you ever seen this work force planning document
18 before?

19 A I couldn't say whether I have or not.

20 Q Do you see the management and sales
21 section?

22 A Yes.

Capital Reporting Company

Page 183

1 seven years, right?

2 A Approximately, yes.

3 Q You held a management position for
4 approximately six to eight months?

5 A Two years, year and a half. I can't
6 remember when I had the promotion, whenever that
7 was.

8 Q I would assume that you were generally
9 familiar with the written policies of Express?

10 A That's a difficult question to answer. I
11 had some knowledge of some of the policies.

12 Q Did you understand that -- I'm asking you
13 about the written policies, not about practices.
14 Did you understand that Express says written
15 policies prohibited discrimination?

16 A Yes.

17 Q Did you understand that Express's written
18 policies provided for FMLA leaves?

19 A That they have written policies?

20 Q That provided for FMLA leaves?

21 A Yes.

22 Q Did you understand that there was an open

Capital Reporting Company

Page 184

1 door policy, meaning if you had issues you can
2 contact the human resource department supervisors or
3 others?

4 A Yes.

5 Q And did you understand that the company's
6 written policies provided for the accommodation of
7 disabilities?

8 A Yes.

9 MR. CAMPBELL: Take a short break.

10 (Off the record)

11 BY MR. CAMPBELL:

12 Q I want to make certain that there's
13 nothing else you recollect that's relevant to your
14 claims against Express as we sit here today that you
15 haven't already testified about?

16 MR. EHRENBURG: Object to the form, you can
17 answer.

18 A Not that I can think of right now.

19 Q Your counsel gave a list of witnesses in
20 the initial disclosures, if you want talk to your
21 counsel you can. I can go through the whole list,
22 it looks to be a lot of information from counsel if



THE ONE RESOURCE FOR YOUR BENEFITS INFORMATION



ORIGINAL

December 10, 2003

Paula Pagonakis
140 Back Creek Dr.
Middletown, DE 19709

Dear Paula:

You have been granted leave in accordance with the Family and Medical Leave Act (FMLA) for your own medical condition.

Your leave under FMLA began on 12/8/03. Please be aware of the following expectations and obligations:

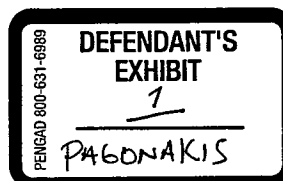
- The leave will be counted against your Family and Medical Leave Act (FMLA) entitlement of 12 weeks;
- The Company reserves the right to require you to furnish medical certification of your own or your family member's health condition. You have already provided such certification;
- In the case of a leave for your own serious health condition, you will be required to present a fitness for duty certificate to be returned to employment;
- The Company may require substitution of paid leave under certain circumstances if you have remaining vacation time, sick time, or disability time.
- You will be required to give periodic updates on your status and your intent to return to work;
- Ordinarily, you will have a right to be returned to the same or an equivalent job upon your return from leave;

If you do not plan to return to work as of the end of your approved leave, please contact your Manager/Supervisor and HR Direct at 1-866-473-4728. If you fail to report to work at the end of your approved leave, the Company will assume you wish to voluntarily resign.

If you have any questions concerning your rights and obligations under FMLA, please contact HR Direct.

Sincerely,

Susan Manos
Case Management Consultant



THE LIMITED, INC./INTIMATE BRANDS, INC.
Four Limited Parkway East
Reynoldsburg, Ohio 43068
1.866.HRDIRECT (1.866.473.4728)
Fax 614.577.6396

EXPRESS-PAG000015

No because a medical leave non paid with other form after 12/16 or must

REQUEST FOR LEAVE

Please complete this request if you are requesting to take a leave of absence. Return the completed form to HR Direct. The address and fax are provided below.

1. I, PAULY PAGOVARIS, request to take family leave for the following reason:
Associate Name (please print)

☐ To care for my child after birth.

☐ To care for my newly adopted child.

☐ To care for my foster child.

☐ To care for my spouse, son, daughter, or parent who has a serious health condition.
 (Attending physician must complete a Certification of Health Care Provider Form. Call to request a copy of this form.)

☒ For a serious health condition that causes me to be unable to perform the essential functions of my job.

☐ Personal, state reason: _____

2. I am requesting my leave to begin on (date) 12-17-03 and end on 12-23-03

3. I am requesting to use 0 PTO days during my leave.
 Please note if your leave is being paid under the disability program, five PTO days will be used in the beginning of your leave. PTO days requested on this form will be in addition to those used at the beginning of your leave. PTO will not be paid during any time that an associate is receiving short- or long-term disability payments.

Please check the following if it applies to you:

4. ☐ I am requesting a Family Leave for intermittent periods. I have attached information concerning the time I need to take off from work.

I understand that if I am on maternity related disability leave and do not return this form, I am expected to return to work six (6) weeks following the normal delivery of my child, or eight (8) weeks after delivering my child by cesarean section.

I understand that it is my responsibility to keep my Manager updated on my condition and my intent to return to work. I have attached a written certification from a health care provider.

Paula Pagovaris
 Associate's Signature

289-50-8718
 Social Security Number

 Manager's Signature

 Date

 HR Manager's Signature
Home Office/Distribution Center/Client Contact Center Associates Only

 Date

Return to: **HR DIRECT**
FOUR LIMITED PARKWAY
REYNOLDSBURG, OHIO 43068
Fax: (614) 577-6396

Request for Leave
 Revised 11/02

The Limited, Inc.**MEDICAL DISABILITY and/or WORKER'S COMPENSATION CLAIM STATEMENT****Directions:**

- This form is to be used for any medical absence over 5 days.
- Associate must complete Part I of this form and have their attending physician complete Part III.
- The completed form should be returned to:

HR Direct
Attn: Case Management
Four Limited Parkway
Reynoldsburg, OH 43068
FAX: (614) 577-6396

The standards, level of scrutiny and conditions for approval of Short Term Disability Benefits may differ from Long Term Disability benefits. This means the approval of any Short Term Disability does not mean or imply that an application for Long Term Disability for the same or related injury or illness will also be approved. See your Associate Guide for program details.

PART I - To be Completed by ASSOCIATE
(Please Print)

Name: PAULA PAGONAKIS Social Security #: 289-50-8718
 Address: 140 BACK CREEK DR. Date of Birth: 12-18-1952
MIDDLETOWN, DE 19709 Phone: (302) 376-9858
 What Business Do You Work For? EXPRESS Work Location: Store ☒ Home Office ☐ DC/CC ☐
 Work Location (State): DE Last Day Worked 12/4/03
 Marital Status: ☐ Single ☒ Married Number of Tax Exemptions _____
 Is Condition Work-Related: ☐ Yes ☒ No Nature of Illness/Injury: FATIGUE, DEPRESSION
 Was Accident Involved? If Yes, When and Description: _____

I hereby swear that the above are true and I agree to reimburse MetLife to the extent of any overpayment which is in excess of the amounts payable under the Group Health Benefits Plan with MetLife.

To all providers of medical or dental services or suppliers and their representatives, all insurers, utilization programs, medical or hospital service plans, prepaid health plans, employers, group policyholders or contract holders, I authorize any Physician, Insurance Company, Service Plan or Association to disclose to any authorized representative of MetLife Disability Plan, The Limited, Inc. or any one of their designated representatives any information regarding my medical history, treatment, disability or benefits payable.

Associate's Signature: *Paula Pagonakis* Date: 12/13/03

PART II - To be Completed by HRDirect CASE MANAGER CONSULTANT
(Please Print)

Associate's Name: _____ Social Security #: _____
 Hire Date: _____ Group Health Plan Effective Date: _____ Date of Disability: _____
 Date Returned to Work: _____ Job Title: _____ Weekly Earnings: _____
 Salary Continuation Period: from _____ to _____

For New York Associates Only - Avg Weekly Wage for 8 Calendar Weeks Immediately Preceding Week Disability Commenced:

Division: _____ Group/Contract #: 1510100 Employer ID # (EIN): _____
 Case Manager Consultant
 Signature: _____ Phone #: _____ Date Sent: _____

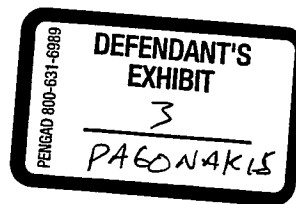
12/23/03

TO: H.R. DIRECT

ATTN: SUSAN

FROM

PAULA PAGONAKIS
STORE 340



TOTAL CARE PHYSICIANS, P.A.

[] Philadelphia Pike Office [] Omega Office [X] Glasgow Office

RETURN TO WORK MEDICAL CERTIFICATION

Patient Name: Paula Pagonakis has been under my care from

12-8-03 to 12-22-03 and is able to return to work on

12-23-03. I certify that this patient is able to resume performing

the function of his/her position with or without reasonable accommodation. Necessary

accommodation(s) is/are as follow(s): needs previous accommodations

Radillo/2

Health Care Provider

12-18-03

TOTAL CARE PHYSICIANS, P.A.
14500 GLASGOW AVE
SUITE 124
NEWARK, DE 19702

I am allowing my health care provider to release to my employer the reason for my absence from

work

Patient's Signature

Diagnosis

Total Care Physicians, P.A.
Family Medicine Office
Glasgow Medical Center
Suite 124
2600 Glasgow Avenue
Newark, DE 19702

EXP
289-50 8718

302-836-4200 (voice)
302-836-8431 (fax)

TO: Susan

FAX NUMBER: 614-577-6396

FROM: Lee

DATE: 12/10

RE:

TOTAL NUMBER OF PAGES BEING SENT, including cover page:

TOTAL CARE PHYSICIANS, P.A.

☐ Philadelphia Pike Office ☐ Omega Office ☒ Glasgow Office

RETURN TO WORK MEDICAL CERTIFICATION

Patient Name: Paula Pagonakis has been under my care from
12/18/03 to 12/22/03 and is able to return to work on

12/23/03. I certify that this patient is able to resume performing
the function of his/her position with or without reasonable accommodation. Necessary

accommodation(s) is/are as follow(s): flex time hours; no living
at night; no climbing

Dr. Brad H. Lee
Health Care Provider

12/10/03
Date

I am allowing my health care provider to release to my employer the reason for my absence from
work.

Patient's Signature

Depression / Olat Epidemics
Diagnosis

December 23, 2003

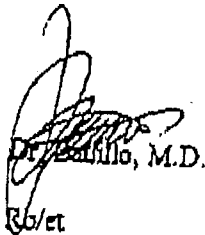
To Whom It May Concern:

Paula Pagonakis is under my care. Due to her traumatic brain injury in 1995 she needs the following accomadations with her job:

1. Daylight work hours
2. Well lit work area
3. No climbing
4. No wet work place
5. Periodic break as provided by law
6. Intermitten days off every 3-4 days

Please call our office if you have any additional questions.

Sincerely,


Dr. Pagonakis, M.D.
Rb/et



Professional Bldg. - Suite 101, 1320 Philadelphia Pike, Wilmington, DE 19809
Omega Professional Center, Bldg. B-Suite 88, Omega Drive, Newark, DE 19713
Glasgow Medical Center, Suite 124, 2800 Glasgow Avenue, Newark, DE 19702

302-788-0666
302-738-5500
302-836-4200

March 18, 2004

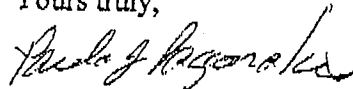
Ana Klancic

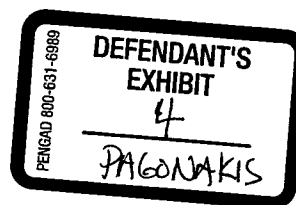
CC: Susan - HR Direct
Kristyn Bosley

Dear Ana,

Please accept my resignation effective immediately.

Yours truly,


Paula J. Pagonakis



CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA

☒ EEOC AMENDED 170-2004-01038

State or local Agency, if any

and EEOC

Name (Indicate Mr., Ms., Mrs.)

Ms. Paula Pagonakis

Home Phone No. (Incl Area Code)

(302) 376-9858

Date of Birth

12-18-1952

Street Address

City, State and ZIP Code

140 Back Creek Drive, Middletown, DE 19709

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

LIMITED BRANDS, INC. (EXPRESS) STORE #340

No. Employees, Members

201 - 500

Phone No. (Include Area Code)

302-738-9221

Street Address

City, State and ZIP Code

SPACE 506, CHRISTIANA MALL, 440 CHRISTIANA MALL ROAD, NEWARK, DE 19702

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☐ RETALIATION ☒ AGE ☒ DISABILITY ☐ OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

12-01-2001

11-25-2003

☒ CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I. I have been employed by Limited Brands, Inc. (The "Respondent") since 1998. I am a qualified individual with a disability as defined by the American with Disabilities Act of 1990 (the "ADA"). Since my hire in 1997, I have been provided with reasonable accommodations by the Respondent. The reasonable accommodations included being permitted to work at home; to work a flexible schedule; and to work only daytime hours. On November 25, 2003 I was informed by Tara Kessler, Human Resources Generalist that the Respondent would no longer provide me with a reasonable accommodation because the person who initially provided this accommodation did not have the authority to do so. I was directed to contact Respondent's Human Resources Director and provide him/her with appropriate medical documentation. When I attempted to hand the required documents to Ms. Kessler, she refused to accept them. A women from H.R. Direct, Emily (last name unknown) told me that the handling of reasonable accommodations was Ms. Kessler's responsibility. I am continuing to work but with significant difficulty due to being denied the previously provided reasonable accommodation.

II. I believe that I am being discriminated against (denied reasonable accommodations) because of my disability in violation of the ADA.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

9/28/05
DATE

SIGNATURE

1/30/04
Date

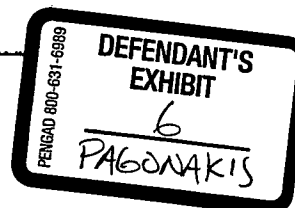
Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements
EEOC - Philadelphia District Office

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)



CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☐ FEPA
☒ EEOC

170-2004-01038

State or local Agency, if any

and EEOC

THE PARTICULARS ARE (Continued from previous page):

III. Since shortly after Kristyn Bosley (age: 30) became Manager in about the Fall 2001, I am not always asked to participate in management discussions and I am never included in management decision making. All of other Co-Managers are often asked by Ms. Bosley to provide input. They are also significantly younger than I.

IV. I believe that I am being excluded from participation in certain management activities and decision because of my age, 51, in violation of the Age Discrimination in Employment Act of 1967 based.

ADDENDUM:

V. I further allege that I was forced to resign from my position with the Respondent due to the ongoing discrimination and Respondent's continued failure to accommodate me.

JAN 2004
Received
EEOC - Philadelphia
District Office

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

9/28/05
DATE
1/30/04
Date

Charging Party Signature

March 24, 2004

Ana Klancic
Express - Springfield Mall
Space 7,8,9
1250 Baltimore Pike
Springfield, PA 13064

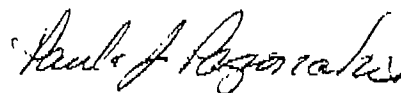
CC: Kristyn Bosley
Susan - HR Direct

Dear Ana,

I am sending a hard copy as a follow-up to the resignation letter Faxed to you last Thursday so I can feel more assured you have received it.

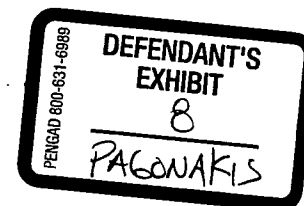
I have had no response to any form of communication from either you or Kristyn since the start of my medical leave, February 3, 2004. I have communicated to you through e-mail, phone messages, voicemail and FAX during this time period with no response from you or Kristyn.

Sincerely,



Paula J. Pagonakis

Enc: copy of Faxed letter of resignation March 18, 2004.



TOTAL CARE PHYSICIANS, P.A.

[] Philadelphia Pike Office [] Omega Office [x] Glasgow Office

RETURN TO WORK MEDICAL CERTIFICATION

Patient Name: Paula Pagonakis has been under my care from
3/15/04 to 3/17/04 and is able to return to work on
3/18/04. I certify that this patient is able to resume performing
the function of his/her position with or without reasonable accommodation. Necessary
accommodation(s) is/are as follow(s): _____

Dr. Badillo/ e

3/11/04

Health Care Provider

Date

I am allowing my health care provider to release to my employer the reason for my absence from
work _____

Patient's Signature

Diagnosis

4m
Plu

